

MAGDALENE PICKERING FRANKLIN

IBLA 81-837

Decided August 27, 1981

Appeal from decision of California State Office, Bureau of Land Management, declaring unpatented mining claims abandoned and void. CA MC 57392 and CA MC 57393.

Affirmed.

1. Federal Land Policy and Management Act of 1976: Recordation of Affidavit of Assessment Work or Notice of Intention to Hold Mining Claim -- Mining Claims: Recordation

Under sec. 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976), the owner of a mining claim located before Oct. 21, 1976, must file a notice of intention to hold or evidence of performance of annual assessment work on the claim prior to Dec. 31 of each year following the calendar year in which the first proof of labor was filed with BLM. There is no provision for waiver of this mandatory requirement, and where evidence of assessment work is not filed because it became lost in the mail the loss must be borne by the claimant.

APPEARANCES: Magdalene Pickering Franklin, pro se.

OPINION BY ADMINISTRATIVE JUDGE HENRIQUES

Magdalene Pickering Franklin appeals the June 8, 1981, decision of the California State Office, Bureau of Land Management (BLM), which

declared the unpatented Maudie's Folly and Sugar Pine lode mining claims, CA MC 57392 and CA MC 57393, abandoned and void because evidence of assessment work or notice of intent to hold the claims had not been filed with BLM on or before December 30, 1980, as required by 43 CFR 3833.2-1, implementing the Federal Land Policy and Management Act of 1976 (FLPMA), 43 U.S.C. § 1744 (1976).

Appellant alleges the proof of labor was filed with the county recorder of Tuolumne County, California, on October 7, 1980, and a photocopy of the recorded instrument was mailed to BLM October 27, 1980. She avers that the proof of labor for each claim has been recorded in Tuolumne County each year since she acquired the claims in 1956 and 1957, and that she has paid the property taxes levied by the county each year since her acquisition of the claims.

[1] Section 314 of FLPMA, 43 U.S.C. § 1744 (1976), and the implementing regulations, 43 CFR 3833.2-1(a) and 3833.4, require that evidence of assessment work for each assessment year be filed in the proper BLM office within the specified time limits, *i.e.* on or before December 30 of each calendar year following the year in which the first proof of labor was filed with BLM under penalty of a conclusive presumption that the claims have been abandoned if the documents are not timely or properly filed for recordation with BLM.

Despite appellant's statement that the documents were properly and timely mailed, the regulations define "file" to mean "being received and date-stamped by the proper BLM office," 43 CFR 3833.1-2(a). Thus, even if the documents had been mailed and an error by the Postal Service prevented it from reaching the BLM office, that fact would not excuse appellant's failure to comply with the cited regulations. Glenn D. Graham, 55 IBLA 39 (1981); Everett Yount, 46 IBLA 74 (1980); James E. Yates, 42 IBLA 391 (1979). The Board has repeatedly held a mining claimant, having chosen the Postal Service as his means of delivery, must accept the responsibility and bear the consequences of loss or untimely delivery of his filings. Edward P. Murphy, 48 IBLA 211 (1980); Everett Yount, *supra*; James E. Yates, *supra*; Amanda Mining & Manufacturing Association, 42 IBLA 144 (1979). Filing is accomplished only when a document is delivered to and received by the proper BLM office. Depositing a document in the mail does not constitute filing. 43 CFR 1821.2-2(f).

This Board has no authority to excuse lack of compliance with the statutes or to afford relief from the statutory consequences. Lynn Keith, 53 IBLA 192, 88 I.D. 369 (1981). Appellant may wish to consult with BLM about the possibility of relocating the claims.

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is affirmed.

Douglas E. Henriques
Administrative Judge

We concur:

Bernard V. Parrette
Chief Administrative Judge

James L. Burski
Administrative Judge

